

From: Belser, Evan [Belser.Evan@epa.gov]
Sent: 1/10/2017 7:30:03 PM
To: Valentine, Julia [Valentine.Julia@epa.gov]; Kaul, Meetu [Kaul.Meetu@epa.gov]; McCabe, Janet [McCabe.Janet@epa.gov]; So, Katherine [so.katherine@epa.gov]; Distefano, Nichole [DiStefano.Nichole@epa.gov]; Senn, John [Senn.John@epa.gov]; Grundler, Christopher [grundler.christopher@epa.gov]; Mylan, Christopher [Mylan.Christopher@epa.gov]; Millett, John [Millett.John@epa.gov]; Hull, George [Hull.George@epa.gov]; Bunker, Byron [bunker.byron@epa.gov]; Giles-AA, Cynthia [Giles-AA.Cynthia@epa.gov]; Fogarty, Johnpc [Fogarty.Johnpc@epa.gov]; Birgfeld, Erin [Birgfeld.Erin@epa.gov]; Phillips, Anna [Phillips.Anna@epa.gov]; Kakade, Seema [Kakade.Seema@epa.gov]; Richards, David [Richards.David@epa.gov]; StClair, Christie [StClair.Christie@epa.gov]; Iddings, Brianna [Iddings.Brianna@epa.gov]; Samtani, Riddhi [samtani.riddhi@epa.gov]; Cook, Leila [cook.leila@epa.gov]; Harrison, Melissa [Harrison.Melissa@epa.gov]; Snapp, Lisa [snapp.lisa@epa.gov]; Conger, Nick [Conger.Nick@epa.gov]; Grantham, Nancy [Grantham.Nancy@epa.gov]; Moltzen, Michael [Moltzen.Michael@epa.gov]; Hart, Daniel [Hart.Daniel@epa.gov]; Benenati, Frank [benenati.frank@epa.gov]; Patulski, Meg [patulski.meg@epa.gov]; McGonagle, Kevin [mcgonagle.kevin@epa.gov]; Brooks, Phillip [Brooks.Phillip@epa.gov]; Werner, Jacqueline [Werner.Jacqueline@epa.gov]; Cohen, Janet [cohen.janet@epa.gov]; Orquina, Jessica [Orquina.Jessica@epa.gov]; Hengst, Benjamin [Hengst.Benjamin@epa.gov]
Subject: RE: Volkswagen Clips 1/10/17

Ex. 5 Attorney Client (AC)

Thanks,
Evan

Evan Belser
Chief, Vehicle and Engine Enforcement Branch
United States Environmental Protection Agency
202-564-6850

Do not release this email. This is confidential attorney-client communication and privileged attorney work product created for law enforcement purposes.

From: Valentine, Julia
Sent: Tuesday, January 10, 2017 2:06 PM
To: Kaul, Meetu <Kaul.Meetu@epa.gov>; McCabe, Janet <McCabe.Janet@epa.gov>; So, Katherine <so.katherine@epa.gov>; Distefano, Nichole <DiStefano.Nichole@epa.gov>; Senn, John <Senn.John@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Mylan, Christopher <Mylan.Christopher@epa.gov>; Millett, John <Millett.John@epa.gov>; Hull, George <Hull.George@epa.gov>; Bunker, Byron <bunker.byron@epa.gov>; Giles-AA, Cynthia <Giles-AA.Cynthia@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Birgfeld, Erin <Birgfeld.Erin@epa.gov>; Phillips, Anna <Phillips.Anna@epa.gov>; Kakade, Seema <Kakade.Seema@epa.gov>; Richards, David <Richards.David@epa.gov>; StClair, Christie <StClair.Christie@epa.gov>; Iddings, Brianna <Iddings.Brianna@epa.gov>; Samtani, Riddhi <samtani.riddhi@epa.gov>; Cook, Leila <cook.leila@epa.gov>; Harrison, Melissa <Harrison.Melissa@epa.gov>; Snapp, Lisa <snapp.lisa@epa.gov>; Conger, Nick <Conger.Nick@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Moltzen, Michael <Moltzen.Michael@epa.gov>; Hart, Daniel <Hart.Daniel@epa.gov>; Benenati, Frank <benenati.frank@epa.gov>; Patulski, Meg <patulski.meg@epa.gov>; McGonagle, Kevin <mcgonagle.kevin@epa.gov>; Brooks, Phillip <Brooks.Phillip@epa.gov>; Belser, Evan <Belser.Evan@epa.gov>; Werner, Jacqueline <Werner.Jacqueline@epa.gov>; Cohen, Janet <cohen.janet@epa.gov>; Orquina, Jessica <Orquina.Jessica@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Valentine, Julia

<Valentine.Julia@epa.gov>

Subject: Volkswagen Clips 1/10/17

Below: Bloomberg, Financial Times, AP, Reuters (updated), AP (via Washington Post), Automotive News, Handelsblatt, AP (via US News), CNN Money, Reuters, Bloomberg (via Washington Post), Forbes, Handelsblatt, New York Times (1/9), The Financial Times (1/9)

Bloomberg

<https://www.bloomberg.com/news/articles/2017-01-10/volkswagen-confirms-4-3-billion-settlement-with-u-s-on-diesel-issue>

Volkswagen Confirms \$4.3 Billion Settlement With U.S. on Diesel Issue

1/10/17 1:46 PM EST

Volkswagen has confirmed it will settle with the U.S. for \$4.3 billion over the emissions scandal, Bloomberg News reports.

The settlement will include a guilty plea.

Financial Times

<https://www.ft.com/content/f2460c7c-d729-11e6-944b-e7eb37a6aa8e>

VW and US authorities close to revealing criminal settlement

By David J Lynch and Patrick McGee 1/10/17 1:11 PM EST

Volkswagen and the US Department of Justice expect to unveil a criminal settlement relating to the German carmaker's diesel emissions scandal as early as Wednesday, according to people familiar with the situation.

A negotiated agreement between VW and the US Department of Justice is likely to require the company to pay a hefty fine and plead guilty to one or more felonies, several former prosecutors have predicted.

VW, which admitted in September 2015 to installing software in its diesel cars to cheat emissions tests, is eager to resolve potential criminal charges before the DoJ political appointees overseeing the settlement talks depart with the Obama administration.

Waiting for new DoJ officials to be confirmed, as Donald Trump becomes US president this month, might result in VW not finalising a negotiated deal with the authorities for several more months because the company's case is complex, and new appointees would need to become familiar with the details.

A criminal settlement in the US would be a major milestone in VW's efforts to draw a line under the affair, in which up to 11m of the company's diesel cars worldwide were fitted with software designed to understate harmful emissions of nitrogen oxides in official tests.

In the US, where the scandal was uncovered by regulators, the affair has already cost VW \$15.3bn in a partial civil settlement involving 475,000 two-litre diesel cars, an additional \$1.2bn to resolve a class-action lawsuit by the company's dealers, and a further \$1bn to recall or buy back 60,000 three-litre vehicles.

"It is in the interest of VW and DoJ to get this [criminal settlement] done," said Doug Parker, who led the Washington-based Environmental Protection Agency's investigation of VW's cheating until he retired in March.

"They appear to be hell bent on resolving this before Trump gets in," said one former prosecutor.

VW said on Tuesday that it was continuing to co-operate with the DoJ, adding that it would not be appropriate to comment on ongoing investigations. The DoJ declined to comment.

Among the potential charges facing VW in the US criminal settlement are violations of the Clean Air Act, making false statements to authorities and conspiracy to commit fraud, several former prosecutors who have followed the case said.

Deputy attorney-general Sally Yates last June called the VW case “one of the most flagrant violations of environmental and consumer laws in our country’s history”.

Any settlement is unlikely, however, to resolve the potential liability of high-level company executives based in Germany or the US, said a DOJ official and a second person familiar with the case.

Conduct outlined in a criminal complaint that was released on Monday and related to Oliver Schmidt, VW’s former head of compliance in the US, suggests that more senior company executives are likely to face charges.

The complaint alleges that after being briefed in July 2015 about the software used in VW diesel cars to understate emissions in official tests, “executive management” at the company’s headquarters in Wolfsburg ordered lower-level managers to continue concealing it from US regulators.

VW only admitted installing software-based defeat devices in its cars in September 2015.

US prosecutors’ leverage in the settlement talks has been boosted by co-operation from several VW employees who were personally involved in a scheme to cheat emissions tests.

Since 2015, US investigators have met with VW employees opposed to the company’s use of defeat devices in clandestine sessions outside the country, said one person familiar with the probe.

Klaus Ziehe, a German state prosecutor in Braunschweig, near VW’s Wolfsburg headquarters, said that US authorities’ work had no bearing on his office’s ongoing investigations into the emissions scandal.

“These will go on for weeks and months,” he said. German authorities have not arrested any individuals and — regardless of what happens in the US — “I cannot see that changing in the next few days or weeks”, he added.

AP

http://hosted.ap.org/dynamic/stories/E/EU_VOLKSWAGEN_SALES_RACE?SITE=AP&SECTION=HOME&TEMPLATE=DEFAULT&CTIME=2017-01-10-12-59-59

What scandal? VW closing in on title as world's top carmaker

By David McHugh 1/10/17 12:59 PM EST

FRANKFURT, Germany (AP) -- It's ironic: Volkswagen spent 2016 battling a huge scandal over cars it rigged to cheat on emissions tests.

And now stands a decent chance to pass Toyota for the title of world's biggest carmaker for the year.

Booming business in China helped Volkswagen increase its sales to 10.31 million vehicles last year across all its brands, which include Audi, Porsche and Skoda, the company said Tuesday.

That was an increase of 3.8 percent over 2015, when Volkswagen came in second to Toyota. And a strong finish to the year in December - 11.8 percent better than the same month the year before - improves the company's chances of moving from No. 2 to No. 1 in global sales.

That Volkswagen is even in the running for top spot seems remarkable considering how terrible the year was on the legal and image front.

The company based in Wolfsburg, Germany, agreed to a \$15 billion settlement for claims from U.S. environmental authorities and owners of 500,000 cars. It faces investor lawsuits and criminal probes in Germany and the U.S., where a heavy criminal fine is likely.

And the scandal news kept coming this week as Oliver Schmidt, Volkswagen's former head of U.S. environmental compliance, was arrested in Florida and appeared in a Detroit court in prison garb and shackles. Engineer James Liang had earlier pleaded guilty and offered to assist federal law enforcement in their investigation.

Despite all that, huge demand in China may be enough to push Volkswagen past its Japanese rival and Detroit-based General Motors. Neither rival has reported 2016 sales yet. For 2015, Toyota Motor Co. came in first with 10.15 million, Volkswagen was second with 9.93 million, and GM third with 9.8 million.

Volkswagen's improved sales show how crucial China has become for Germany's carmakers, including BMW and Daimler. Of the three, Volkswagen is the most dependent on the Middle Kingdom. It sold 3.98 million cars there last year, more than a third of its total unit sales.

Volkswagen was barely behind Toyota after 11 months of 2016, but China in particular fueled the strong December. U.S. sales, which are much smaller, were off 2.6 percent for the year.

To add a layer of irony, overtaking Toyota would come only after Volkswagen abandoned its goal of achieving global supremacy in raw sales numbers.

Dethroning Toyota was part of the company's Strategy 2018 pushed by CEO Martin Winterkorn, who lost his job due to the scandal. But the new CEO, Matthias Mueller, has dropped that emphasis on unit sales in the latest strategy, amid concerns it fostered a management culture that could have helped create the emissions scandal. The new plan focuses more profitability and a greater emphasis on electric vehicles, digital services such as car-sharing and ride-hailing. Toyota also downplays the sales race.

Other factors helping Volkswagen sales: The company's other brands, particularly Audi, Porsche and Skoda, helped make up for any weakness at the namesake grand.

And Volkswagen didn't sell many cars in the U.S., where the scandal first broke, in the first place.

"China is the big equalizer," Ferdinand Dudenhoeffer, director of the CAR-Center Automotive Research at the University of Duisburg-Essen, said in an email. "Diesel plays no role there, so your reputation can't suffer. China today is the center of the automotive world, for Volkswagen as well."

"And when you look more closely at the numbers, Volkswagen didn't lose so much in the end in Europe, because Audi and Skoda were able to buck the trend a little."

After a strong last quarter of the year in China, where Volkswagen is stronger than Toyota, "Volkswagen would have to have the edge," Dudenhoeffer said.

For decades, Volkswagen has steadily grown its business in China. High-end offerings such as Porsche, Lamborghini and Bentley vehicles are imported, but the company has a large presence on the ground making cars specifically for the mass market there with Chinese partners. Its joint-venture agreements with its local partners, SAIC Volkswagen and FAW-Volkswagen, date to 1984 and 1990.

China's car market has grown for 26 straight years, and did so again in 2016. Sales were boosted by a tax cut on cars with smaller engines; some people may have brought forward purchases because it isn't clear if the tax break will be extended next year.

Volkswagen still faces serious challenges. The Volkswagen brand has shown skimpy profits due to chronically high costs, and more than half of the wider group's profits come from the luxury Audi and Porsche units. The Volkswagen division is shedding 23,000 jobs to save some \$4 billion a year from 2020, but still has a long way to go.

The top three carmakers make roughly the same number of vehicles per year, but Toyota needs 349,000 workers and GM only 202,000 while Volkswagen employs 624,000. The company remains a niche producer in the large U.S. market, and the damage to its image from the scandal won't help that. Investigations and lawsuits remain open.

And along with all the carmakers, it faces possible disruptive competition from tech companies who may muscle into their business through new ways of getting from one place to another, including ride-hailing apps, car-sharing and autonomous vehicles.

But it's a crown Volkswagen definitely wouldn't refuse.

Reuters

http://www.reuters.com/article/us-volkswagen-emissions-board-idUSKBN14U1VC?feedType=RSS&feedName=businessNews&utm_source=dlvr.it&utm_medium=twitter

Volkswagen board expected to meet to approve U.S. diesel settlement

David Shepardson 1/10/17 12:20 PM EST

Volkswagen AG's (VOWG_p.DE) supervisory board is set to meet on Wednesday to approve a civil and criminal settlement with the U.S. Justice Department that will include a penalty of about \$4 billion, sources briefed on the matter said Tuesday.

The deal, which is expected to include a guilty plea by the German automaker or one of its corporate entities for its conduct in misleading regulators about diesel emissions, comes as the automaker seeks to move past its "Dieselgate" scandal.

Analysts welcomed that a settlement looked set to be reached before President-elect Donald Trump takes office on Jan. 20, saying it would mark a milestone in VW's (VOWG_p.DE) efforts to overcome its biggest-ever corporate scandal.

"There is apprehension in the market that Trump may become an unpredictable president and turn against non-U.S. companies," said Bankhaus Metzler analyst Juergen Pieper. "The deal is not cheap but it gives clarity to investors and relief to VW."

As part of a settlement VW would have to agree to significant reforms and will face oversight by an independent monitor. The company declined to comment.

The deal with the Justice Department comes as the carmaker aims to rebuild its long-struggling business in the United States, where the decline in VW brand sales last year accelerated to 8 percent.

Europe's largest automaker is striving to revive its fortunes in the wake of the dieselgate scandal by developing a new modular platform for mass producing electric cars and by embracing automated driving to become a leader in green transport by 2025

VW admitted in September 2015 to installing secret software in hundreds of thousands of U.S. diesel cars to cheat exhaust emissions tests and make them appear cleaner than they were on the road, and that as many as 11 million vehicles could have similar software installed worldwide.

It's still not clear where criminal investigations into the responsibility of individual managers will end after a second VW employee was charged by U.S. prosecutors on Monday with conspiracy to defraud the United States over VW's emissions cheating and the automaker was accused of concealing the cheating from regulators.

In Germany, state prosecutors are investigating whether former CEO Martin Winterkorn misled investors by withholding information about the scale of its problems with U.S. regulators. Prosecutors are also investigating the roles of chairman Hans Dieter Poetsch, previously finance chief, and VW brand head Herbert Diess.

VW has repeatedly said no current or former board members were involved in the cheating and that it did not release information sooner because it expected to reach a negotiated settlement with U.S. regulators.

The company has agreed to spend up to \$17.5 billion in the United States to resolve claims by U.S. regulators, owners and dealers and offered to buy back nearly 500,000 polluting vehicles.

Pieper, who has a "buy" recommendation on VW stock, said with 31 billion euros (\$33 billion) of net liquidity at the end of September, VW was able to cope with the cost of the dieselgate scandal, which he expects to reach 30 billion euros.

VW would face major financial difficulties if the European Commission, governments and consumer groups were to succeed in pushing VW to grant redress to owners of affected diesel cars similar to that agreed in the United States, said Pieper.

VW said earlier on Tuesday it had record group sales in 2016 of 10.3 million vehicles, including a 12 percent jump in December. That figure should put VW ahead of Japanese rival Toyota Motor Co (7203.T) as the world's largest car producer by volume for the year.

(Reporting by David Shepardson in Detroit, Andreas Cremer in Berlin and Ilona Wissenbach in Frankfurt; Editing by Jeffrey Benkoe and Mark Potter)

Reuters

http://www.reuters.com/article/us-volkswagen-emissions-board-idUSKBN14U1VC?feedType=RSS&feedName=businessNews&utm_source=dlvr.it&utm_medium=twitter

Volkswagen board expected to meet to approve U.S. diesel settlement

David Shepardson 1/10/17 10:22 AM EST

Volkswagen AG's (VOWG_p.DE) supervisory board is set to meet on Wednesday to approve a civil and criminal settlement with the U.S. Justice Department that will include a penalty of about \$4 billion, sources briefed on the matter said Tuesday.

The deal, which is expected to include a guilty plea by the German automaker or one of its corporate entities for its conduct in misleading regulators about diesel emissions, comes as the automaker seeks to move past its "Dieselgate" scandal. As part of a settlement VW would have to agree to significant reforms and will face oversight by an independent monitor. The company declined to comment.

Automotive News

<http://www.autonews.com/article/20170110/COPY01/301109722/vw-managers-warned-to-stay-in-germany-as-u-s-charges-near>

VW managers warned to stay in Germany as U.S. charges near

By Tom Schoenberg, David McLaughlin and Andrew Harris 1/10/17, 2:25 AM

WASHINGTON -- Some of Volkswagen Group's top executives may find it risky to leave Germany as U.S. prosecutors prepare to charge more company officials.

Oliver Schmidt, a VW executive, was **arrested in Miami** as he was returning to Germany from vacation and faces charges of misleading regulators about the automaker's diesel-emissions cheating devices. Prosecutors are preparing to **charge more high-level German-based executives** in the case, a person familiar with the matter said.

Schmidt's arrest caught many VW executives by surprise, including some attending this week's Detroit auto show, according to another person. Lawyers for some senior executives in Germany have already warned their clients not to leave the country, according to a third person.

The arrest and the looming charges against senior executives show that the year-long investigation into the emissions cheating is coming to a head in the final days of the Obama administration. A multibillion-dollar settlement between the carmaker and the Justice Department will probably come this week, people familiar with the matter have said. VW admitted last year that about 11 million diesel cars worldwide were outfitted with so-called defeat devices, embedded algorithms used to game emissions tests.

Schmidt, 48, who was VW's liaison with U.S. environmental regulators, appeared in federal court in Miami Monday, where a judge ordered him held in custody as a flight risk. His lawyer sought Schmidt's release, saying his client had alerted the government he was visiting and was willing to speak with investigators and face charges.

Prosecution map

The court filing against Schmidt lays out what could be a road map to charges against higher-level executives.

Volkswagen's senior officials in Wolfsburg, Germany, were told in July 2015 of the existence, purpose and characteristics of the device that lowered emissions on diesel cars when undergoing environmental testing, the U.S. alleged, citing information obtained from three cooperators. VW admitted its efforts to skirt environmental standards in September 2015.

"VW employees assured VW executive management that U.S. regulators were not aware of the defeat device," according to the filing in federal court in Detroit. "Rather than advocate for disclosure of the defeat device to U.S. regulators, VW executive management authorized its continued concealment."

The person familiar with the matter declined to specify when charges against more senior-level executives may be filed or whether any executives that could be charged are still employed by the automaker. The Justice Department declined to comment on additional charges.

The government and Volkswagen have been trying to reach a settlement by Jan. 20 before the Trump administration comes into office and replaces the political appointees who have been overseeing the diesel-cheating case. VW also faces a criminal probe and lawsuits in Germany.

Settlement cost

Any criminal penalty from the government would come on top of a \$14.7 billion U.S. civil settlement between drivers, regulators and VW that requires the company to fix or buy back some models and pay to promote zero-emissions vehicles. In all, the company has already committed to spending almost \$20 billion to settle complaints by car owners, dealerships and regulators in the U.S. and Canada.

VW has said top management was unaware of the decision to install the software to cheat emissions tests. "The then and current board of management of Volkswagen AG had, at any rate, no knowledge of the use of unlawful engine-management software at the time," Volkswagen wrote in its annual report for 2015, a statement it has cited in response to subsequent inquiries.

VW has suspended or pushed out about a dozen executives in the aftermath of the scandal including former CEO Martin Winterkorn, who has denied any knowledge of the cheating.

"Volkswagen continues to cooperate with the Department of Justice as we work to resolve remaining matters in the United States," the company said in a statement. "It would not be appropriate to comment on any ongoing investigations or to discuss personnel matters."

Extradition barred

The U.S. can charge individuals in Germany, but getting executives to stand trial in the U.S. could be difficult because Germany's constitution bars extradition of German nationals to foreign countries other than European Union members.

Dozens of Volkswagen officials in Germany have hired U.S. criminal defense lawyers over the past several months as the Justice Department ramped up its investigation, Bloomberg reported last month. U.S. authorities have traveled to Germany to arrange interviews with managers and seek cooperation.

Schmidt began working for the automaker in 1997 and served as general manager in charge of its Environmental and Engineering Office from 2012 to 2015, according to an affidavit filed by the Federal Bureau of Investigation. That office was primarily responsible for communicating and coordinating with U.S. regulatory agencies, according to the filing. In March 2015, Schmidt was promoted to a more senior management position within Volkswagen and returned to the company's headquarters in Germany.

VW has declined to indicate Schmidt's current employment status with the company.

Honest, or not

After learning in April 2014 that West Virginia University's Center for Alternative Fuels, Engines and Emissions had found that three VW diesel vehicles had emitted 40 times the permissible limit in the U.S., Schmidt wrote to a colleague: "It should first be decided whether we are honest. If we are not honest, everything stays as it is," according to the affidavit.

In the same message, Schmidt noted that the International Council on Clean Transportation, an environmental group, had "stupidly" published the WVU findings. "Not good," he said. In the summer 2015, Schmidt took a direct role in VW's response to questions from U.S. regulators about the emissions tests.

After these emissions-testing discrepancies became known to the U.S. government, he allegedly misled federal regulators about reasons for the differing test results. Schmidt offered "reasons for the discrepancy other than the fact that VW was intentionally cheating on U.S. emissions test in order to allow VW to continue to sell diesel vehicles in the United States," according to the affidavit.

Schmidt is accused of participating in a conspiracy to defraud the U.S. government and Volkswagen customers and to violate the federal Clean Air Act from 2006 to 2015.

Employee cooperating

The FBI affidavit lays out how in August 2015, senior Volkswagen managers approved a plan for what the automaker's employees would say in an upcoming meeting with California regulators. That plan called for Volkswagen employees to continue concealing the existence of the emissions device. However, one employee, who is cooperating with the investigation, ignored those instructions and admitted that Volkswagen cheated on U.S. emissions tests.

The government notes in the criminal case against Schmidt that the charge against him is based in part on information from two cooperating witnesses who worked in Volkswagen's engine development department and also from James Liang, a former VW software engineer who pleaded guilty to a conspiracy charge in September. The unidentified witnesses are helping the U.S. in exchange for immunity from prosecution, according to the FBI affidavit.

The case is U.S. v. Oliver Schmidt, 16-mj-30588, U.S. District Court, Eastern District of Michigan (Detroit).

AP via The Washington Post

https://www.washingtonpost.com/business/scandal-cant-keep-volkswagen-from-strong-sales-increase/2017/01/10/7a748a84-d733-11e6-a0e6-d502d6751bc8_story.html

Scandal can't keep Volkswagen from strong sales increase

By David McHugh 1/10/17 9:24 am

FRANKFURT, Germany — Booming business in China helped push Volkswagen to a 3.8 percent sales increase in 2016 — despite lawsuits and criminal investigations over its cars that cheated on emissions tests.

Volkswagen sold 10.31 million cars across all of the company's brands, which include Audi, Porsche and Skoda. Sales in China grew 12.2 percent for the full year, to 3.98 million.

The results strengthened Volkswagen's bid for the title of world's largest carmaker against the sales leader from 2015, Toyota. The Japanese automaker led with 10.15 million, followed by Volkswagen with 9.93 million and U.S.-based General Motors with 9.8 million.

Volkswagen was helped by a strong December. Global sales jumped 11.8 percent during the month, with stellar growth of 18.6 percent in China, the company's biggest single market.

Volkswagen has agreed to a \$15 billion settlement with U.S. authorities and car buyers, but is still solving its legal issues. It has a criminal penalty pending and an executive formerly responsible for U.S. environmental compliance was arrested in Florida over the weekend.

Sales fell by 2.6 percent for the year in the U.S., where the scandal first broke in September 2015. The U.S. Environmental Protection agency said Volkswagen had illegally installed software that turned on pollution controls when cars with diesel engines were on test stands. During normal driving, the emission controls were turned down, improving performance but violating limits on health-damaging nitrous oxides. Some 11 million cars worldwide were sold with the illegal software.

Yet even the U.S. market showed signs of a rebound, with a robust increase of 16 percent in the last month of the year. The U.S. is a much smaller market for the company than China, a factor which helped limit the global sales damage.

Volkswagen still faces serious trouble from the scandal. It has yet to agree on a criminal penalty with the U.S. Justice Department that could run to several billions of dollars. In addition to the executive arrested in Florida, Oliver Schmidt, engineer James Liang has pleaded guilty to conspiring to defraud regulators and customers.

German prosecutors are investigating as well. Investors have filed suit in Germany seeking 8.2 billion euros (\$8.62 billion) in damages.

Chastened VW Wooing U.S. Buyers

By Stefan Menzel 1/10/17 5:53 AM

The United States is the world's second-largest auto market after China. And German automakers, including a contrite VW, have descended on the Detroit Motor Show with new models to attract American buyers.

There's BMW, which revealed the new version of its midsize 5 Series sedan furnished with a redesigned cockpit in the style of the 7 Series. And Daimler is presenting its eagerly awaited new E Class coupe.

VW, in particular focus because of the diesel scandal, is rolling out two SUV models, the new Atlas and the Tiguan Allspace, a version of the bestselling model lengthened for the U.S. market.

The automaker is opting for a softly, softly approach at the Detroit show, abandoning the glitz and glamour of its presentations of previous years.

Chief Executive Matthias Müller isn't turning up after last year's public relations debacle in Detroit when he told U.S. broadcaster NPR that VW "didn't lie" to U.S. regulators when confronted with skewed diesel emissions data and called the situation "a technical problem," rather than fraud.

Instead, VW is being represented by Herbert Diess, the head of the VW brand, who declared at a VW opening event in Detroit on Sunday: "We want to reignite America's Love for Volkswagen."

In a sign of changing times at the group, Audis and Porsches were conspicuous by their absence at Sunday's opening VW event. In past years, VW had shown off its array of brands in a show of corporate strength. Now, it seems, it's every brand for itself. Part of VW's response to the emissions-rigging scandal has been to make its brands more independent of one another, and that's evident in Detroit. "We've got to get used to that," said one Audi executive.

Dieselgate continues to simmer. A VW executive, Oliver Schmidt, who led the company's U.S. regulatory compliance office from 2014 to March 2015, was arrested over the weekend on conspiracy charges related to the case. And Reuters reported that the U.S. Justice Department and VW were nearing a multi-billion dollar agreement to resolve the government's civil and criminal investigations.

The deal, which would require the German automaker to pay a penalty of more than \$3 billion and could top \$4 billion, or €3.8 billion, could be announced as early as this week, Reuters reported, citing unnamed sources close to the negotiations. A VW spokeswoman declined to comment.

Units sales of VW brand cars fell 7.6 percent to around 323,000 in the U.S. in 2016, confining the automaker to a tiny market share of 1.8 percent, not nearly enough for a firm of VW's standing which has a market share of around 20 percent in Germany. The decline is no surprise, of course, as the scandal led VW to take all its diesel models off the market, condemning it to a decline in sales. But global sales of VW brand cars rose just under 3 percent to around 6 million units, Mr. Diess said in Detroit.

Its Audi subsidiary managed to increase its U.S. sales by 4 percent to 210,000 units in 2016. Sports car unit Porsche reached a new record in the U.S. last year, boosting sales by almost 5 percent to 54,000 cars.

Mr. Diess wants to emulate that success by introducing models designed to appeal to U.S. drivers: SUVs, and bigger car models in general. It will need to snatch market share from well-established rivals General Motors and Ford. The company's repositioning in the U.S. will take time. Mr. Diess said it could take 10 years for VW to become a relevant player in the mass market. However, if the Americans forget about its diesel cars, there's a chance the automaker could reach its goal sooner.

AP (via US News)

<http://www.usnews.com/news/business/articles/2017-01-10/scandal-cant-keep-volkswagen-from-strong-sales-increase>

Scandal can't keep Volkswagen from strong sales increase

By David McHugh 1/10/17 9:22 AM EST

FRANKFURT, Germany (AP) — Booming business in China helped push Volkswagen to a 3.8 percent sales increase in 2016 — despite lawsuits and criminal investigations over its cars that cheated on emissions tests.

Volkswagen sold 10.31 million cars across all of the company's brands, which include Audi, Porsche and Skoda. Sales in China grew 12.2 percent for the full year, to 3.98 million.

The results strengthened Volkswagen's bid for the title of world's largest carmaker against the sales leader from 2015, Toyota. The Japanese automaker led with 10.15 million, followed by Volkswagen with 9.93 million and U.S.-based General Motors with 9.8 million.

Volkswagen was helped by a strong December. Global sales jumped 11.8 percent during the month, with stellar growth of 18.6 percent in China, the company's biggest single market.

ADVERTISING

inReadVolkswagen has agreed to a \$15 billion settlement with U.S. authorities and car buyers, but is still solving its legal issues. It has a criminal penalty pending and an executive formerly responsible for U.S. environmental compliance was arrested in Florida over the weekend.

Sales fell by 2.6 percent for the year in the U.S., where the scandal first broke in September 2015. The U.S.

Environmental Protection agency said Volkswagen had illegally installed software that turned on pollution controls when cars with diesel engines were on test stands. During normal driving, the emission controls were turned down, improving performance but violating limits on health-damaging nitrous oxides. Some 11 million cars worldwide were sold with the illegal software.

Yet even the U.S. market showed signs of a rebound, with a robust increase of 16 percent in the last month of the year. The U.S. is a much smaller market for the company than China, a factor which helped limit the global sales damage.

Volkswagen still faces serious trouble from the scandal. It has yet to agree on a criminal penalty with the U.S. Justice Department that could run to several billions of dollars. In addition to the executive arrested in Florida, Oliver Schmidt, engineer James Liang has pleaded guilty to conspiring to defraud regulators and customers.

German prosecutors are investigating as well. Investors have filed suit in Germany seeking 8.2 billion euros (\$8.62 billion) in damages.

CNN Money

<http://money.cnn.com/2017/01/10/news/volkswagen-vw-emissions-cheating-coverup/>

U.S. prosecutor: Volkswagen's top execs ordered emissions cover-up

By Charles Riley 1/10/17 8:39 AM EST

In a complaint unsealed Monday, U.S. prosecutors allege that Volkswagen's executive managers in Germany were briefed in person about the "defeat device" on or about July 27, 2015, but chose to keep regulators in the dark.

"Rather than advocate for disclosure of the defeat device to U.S. regulators, VW executive management authorized its continued concealment," the complaint states.

One Volkswagen (VLKAF) executive present at the meeting, Oliver Schmidt, was arrested by the FBI at the weekend for his alleged role in the company's rampant cheating on emissions tests.

Schmidt was the head of regulatory compliance in the U.S. in 2014 and 2015. Prosecutors have accused him of helping to organize a conspiracy to obscure the truth from regulators and defraud customers.

Prior to the 2015 meeting with executive managers at company headquarters, Schmidt and other VW employees allegedly created a chart showing possible outcomes of an upcoming meeting with the California Air Resources Board.

If the meeting did not go well, the team assessed that one possible outcome was "indictment."

Volkswagen did not respond to questions about the alleged coverup, but spokesman Eric Felber did say that the company "continues to cooperate with the Department of Justice."

In September 2015, Volkswagen admitted to rigging half a million cars in the U.S., and millions more around the world, to get around emissions rules. The automaker has agreed to pay a \$14.7 billion penalty in the U.S.

Prosecutors alleged Monday that the scheme went on for nearly a decade. In 2006, Volkswagen engineers in Germany knew the company's new 2.0 liter diesel engine was not capable of meeting emissions regulations.

Instead of going back to the drawing board, they designed a "defeat device" software function that allowed cars to detect when their emissions were being tested, and to boost performance during that time.

The scheme began to unravel when, in 2014, a group of scientists at West Virginia University discovered that Volkswagen cars were emitting far more pollutants than the automaker claimed.

According to prosecutors, Schmidt emailed a group of VW executives after learning of the research. "It should first be decided whether we are honest," he wrote. "If we are not honest, everything stays as it is."

The complaint does not name company executives, other than Schmidt, who were present at key meetings. It was not immediately clear whether U.S. prosecutors are preparing to charge other company executives.

The CEO of Volkswagen Group, Martin Winterkorn, resigned in September after the scandal was made public. Volkswagen Group of America CEO Michael Horn has also left the company.

Both executives were later cleared as part of an internal probe conducted by U.S. law firm Jones Day.

Reuters

<http://www.reuters.com/article/us-volkswagen-emissions-concealment-idUSKBN14T1NG>

U.S. charges Volkswagen executive with fraud over emissions scandal

By Zachary Fagenson and David Shepardson 1/9/17, 5:35pm

Volkswagen AG suffered a new setback on Monday when an executive was charged with conspiracy to defraud the United States over the company's diesel emissions cheating and the automaker was accused of concealing the cheating from regulators.

Oliver Schmidt, who was general manager in charge of VW's environmental and engineering office in Michigan, did not enter a plea at an initial appearance in U.S. District Court in Miami on Monday and was ordered held pending a hearing on Thursday by U.S. Magistrate Judge William C. Turnoff.

Schmidt, who was shackled and wearing a jail uniform, was charged with fraud and conspiracy in not disclosing a cheating device used to rig U.S. diesel emissions tests from 2006 through 2015.

He was arrested on Saturday in Florida after attempting to return to Germany from a vacation there, the Justice Department said. Schmidt's lawyer David Massey said Schmidt had learned of the investigation and reached out to the U.S. Federal Bureau of Investigation to offer to cooperate. Schmidt then met with FBI agents in London last year, he said.

The arrest was first reported by the New York Times.

The arrest and court appearance come as VW nears a \$3 billion plus - and potentially \$4 billion - settlement with the Justice Department and Environmental Protection Agency to resolve civil and criminal investigations into the diesel scandal, which sources have told Reuters could be announced as soon as Wednesday. Talks are still under way about some details of the settlements and no deal has been reached, sources said.

An FBI complaint unsealed on Monday against Schmidt said he and other VW employees told executive management about the "existence, purpose and characteristics" of an emissions cheating device in July 2015, and that the executives chose not to immediately disclose it to U.S. regulators.

The FBI complaint accused VW of deliberately misleading regulators about cheating pollution tests in the United States, but did not charge the company with a crime.

Schmidt and other employees gave a presentation about the "defeat device" on or about July 27, 2015, more than a month before the automaker disclosed the device to U.S. regulators in September 2015, the complaint said.

The cheating allowed nearly 580,000 of VW's U.S. diesel vehicles sold since 2009 to emit up to 40 times legally allowable pollution levels.

"In the presentation, VW employees assured VW executive management that U.S. regulators were not aware of the defeat device," the complaint said. "Rather than advocate for disclosure of the defeat device to U.S. regulators, VW executive management authorized its continued concealment."

One slide in the presentation included "Indictment?" if regulators did not approve its diesel software for 2016 models, according to the complaint. The complaint said that in 2006 VW employees realized they would not be able to meet U.S. diesel emissions standard and decided to create cheating software.

Volkswagen said it could not comment on an ongoing legal matter. Hinrich Woebcken, VW's chief executive of the North America region, told reporters at the Detroit auto show on Monday that the automaker was "surprised" by the criminal charge.

A U.S. VW employee, James Liang, was charged in September and pleaded guilty to misleading regulators about diesel emissions and agreed to cooperate with the investigation. His sentencing was delayed last week as prosecutors consider charging others, a court filing said.

LATEST SETBACK

The news comes as VW is trying to convince Americans it has changed its ways. The world's second-largest automaker emphasized its focus on the U.S. market as it rolled out two new sport utility vehicles at the Detroit auto show, including a new longer Tiguan SUV with more cargo space and a larger all-new Atlas SUV that will be built in Tennessee.

"We intend to take that second chance," Woebcken told reporters who joined VW in January 2016. "We are on a good path to get things straight" and added that VW is a "good corporate citizen."

He said VW employs 600,000 people worldwide and they "are honest people" and that it was "unfortunate that a small group of people generated this disappointment."

Much of the company's senior management departed following the scandal, including CEO Martin Winterkorn.

But the allegations in the FBI filing show how difficult it is proving for VW to draw a line under the biggest business scandal in its 80-year history almost 16 months after it broke.

On Monday, however, VW shares rose 4.2 percent to their highest since September 2015 on optimism about the expected U.S. criminal settlement, topping the German blue-chip DAX index [.GDAXI](#). The shares are still 10 percent below pre-scandal levels.

VW admitted in September 2015 to installing the secret defeat device software in hundreds of thousands of U.S. diesel cars to cheat exhaust emissions tests and make them appear cleaner than they were on the road, and that up to around 11 million vehicles could have similar software installed worldwide.

The automaker initially blamed a small group of "rogue engineers" for the test-cheating, and has repeatedly said no current or former board members were involved.

The ensuing scandal has cost the company more than \$18.9 billion in provisions and forced it to drop its diesel offensive in the United States. VW's global brand chief Herbert Diess told reporters on Sunday the company has no plans to ever resume U.S. diesel sales.

VW has already agreed to spend up to \$17.5 billion in the United States to address claims from regulators, dealers, and owners.

Separately on Monday, a British law firm launched legal action against VW seeking thousands of pounds of compensation each for UK drivers affected by the emissions scandal.

In Britain, 1.2 million cars are affected and Marcus Sinclair UK, which is being supported by Slater and Gordon, said around 10,000 drivers had already signed up to the legal action before the launch.

Bloomberg (Via Washington Post)

<http://washpost.bloomberg.com/Story?docId=1376-QIIOT36VDKHY01-5ARMCOG2HK6NEURMF04RAL96E7>

VW Managers Warned to Stay in Germany as U.S. Charges Near

By Tom Schoenberg, David McLaughlin, and Andrew Harris 1/10/17 9:08 AM EST

(Bloomberg) -- Some of Volkswagen AG's top executives may find it risky to leave Germany as U.S. prosecutors prepare to charge more company officials.

Oliver Schmidt, a VW executive, was arrested in Miami as he was returning to Germany from vacation and faces charges of misleading regulators about the automaker's diesel-emissions cheating devices. Prosecutors are preparing to charge more high-level German-based executives in the case, a person familiar with the matter said.

Schmidt's arrest caught many VW executives by surprise, including some attending an auto show in Detroit this week, according to another person. Lawyers for some senior executives in Germany have already warned their clients not to leave the country, according to a third person.

The arrest and the looming charges against senior executives show that the year-long investigation into the emissions cheating is coming to a head in the final days of the Obama administration. A multibillion-dollar settlement between the carmaker and the Justice Department will probably come this week, people familiar with the matter have said. VW admitted last year that about 11 million diesel cars worldwide were outfitted with so-called defeat devices, embedded algorithms used to game emissions tests.

Schmidt, 48, who was VW's liaison with U.S. environmental regulators, appeared in federal court in Miami Monday, where a judge ordered him held in custody as a flight risk. His lawyer sought Schmidt's release, saying his client had alerted the government he was visiting and was willing to speak with investigators and face charges.

The court filing against Schmidt lays out what could be a road map to charges against higher-level executives. Volkswagen's senior officials in Wolfsburg, Germany, were told in July 2015 of the existence, purpose and characteristics of the device that lowered emissions on diesel cars when undergoing environmental testing, the U.S. alleged, citing

information obtained from three cooperators. VW admitted its efforts to skirt environmental standards in September 2015.

“VW employees assured VW executive management that U.S. regulators were not aware of the defeat device,” according to the filing in federal court in Detroit. “Rather than advocate for disclosure of the defeat device to U.S. regulators, VW executive management authorized its continued concealment.”

The person familiar with the matter declined to specify when charges against more senior-level executives may be filed or whether any executives that could be charged are still employed by the automaker. The Justice Department declined to comment on additional charges.

The government and Volkswagen have been trying to reach a settlement by Jan. 20 before the Trump administration comes into office and replaces the political appointees who have been overseeing the diesel-cheating case. VW also faces a criminal probe and lawsuits in Germany. The automaker’s shares rose 4.9 percent to 145.85 euros in Frankfurt.

Any criminal penalty from the government would come on top of a \$14.7 billion U.S. civil settlement between drivers, regulators and VW that requires the company to fix or buy back some models and pay to promote zero-emissions vehicles. In all, the company has already committed to spending almost \$20 billion to settle complaints by car owners, dealerships and regulators in the U.S. and Canada.

VW has said top management was unaware of the decision to install the software to cheat emissions tests. “The then and current board of management of Volkswagen AG had, at any rate, no knowledge of the use of unlawful engine-management software at the time,” Volkswagen wrote in its annual report for 2015, a statement it has cited in response to subsequent inquiries.

VW has suspended or pushed out about a dozen executives in the aftermath of the scandal including former Chief Executive Officer Martin Winterkorn, who has denied any knowledge of the cheating.

“Volkswagen continues to cooperate with the Department of Justice as we work to resolve remaining matters in the United States,” the company said in a statement. “It would not be appropriate to comment on any ongoing investigations or to discuss personnel matters.”

The U.S. can charge individuals in Germany, but getting executives to stand trial in the U.S. could be difficult because Germany’s constitution bars extradition of German nationals to foreign countries other than European Union members.

Dozens of Volkswagen officials in Germany have hired U.S. criminal defense lawyers over the past several months as the Justice Department ramped up its investigation, Bloomberg reported last month. U.S. authorities have traveled to Germany to arrange interviews with managers and seek cooperation.

Schmidt began working for the automaker in 1997 and served as general manager in charge of its Environmental and Engineering Office from 2012 to 2015, according to an affidavit filed by the Federal Bureau of Investigation. That office was primarily responsible for communicating and coordinating with U.S. regulatory agencies, according to the filing. In March 2015, Schmidt was promoted to a more senior management position within Volkswagen and returned to the company’s headquarters in Germany.

After learning in April 2014 that West Virginia University’s Center for Alternative Fuels, Engines and Emissions had found that three VW diesel vehicles had emitted 40 times the permissible limit in the U.S., Schmidt wrote to a colleague: “It should first be decided whether we are honest. If we are not honest, everything stays as it is,” according to the affidavit.

In the same message, Schmidt noted that the International Council on Clean Transportation, an environmental group, had “stupidly” published the WVU findings. “Not good,” he said. In the summer 2015, Schmidt took a direct role in VW’s response to questions from U.S. regulators about the emissions tests.

After these emissions-testing discrepancies became known to the U.S. government, he allegedly misled federal regulators about reasons for the differing test results. Schmidt offered “reasons for the discrepancy other than the fact

that VW was intentionally cheating on U.S. emissions test in order to allow VW to continue to sell diesel vehicles in the United States,” according to the affidavit.

Schmidt is accused of participating in a conspiracy to defraud the U.S. government and Volkswagen customers and to violate the federal Clean Air Act from 2006 to 2015.

The FBI affidavit lays out how in August 2015, senior Volkswagen managers approved a plan for what the automaker’s employees would say in an upcoming meeting with California regulators. That plan called for Volkswagen employees to continue concealing the existence of the emissions device. However, one employee, who is cooperating with the investigation, ignored those instructions and admitted that Volkswagen cheated on U.S. emissions tests.

The government notes in the criminal case against Schmidt that the charge against him is based in part on information from two cooperating witnesses who worked in Volkswagen’s engine development department and also from James Liang, a former VW software engineer who pleaded guilty to a conspiracy charge in September. The unidentified witnesses are helping the U.S. in exchange for immunity from prosecution, according to the FBI affidavit.

The case is U.S. v. Oliver Schmidt, 16-mj-30588, U.S. District Court, Eastern District of Michigan (Detroit)

Forbes

<http://www.forbes.com/sites/bertelschmitt/2017/01/10/u-s-case-against-nabbed-dieselgate-manager-imperils-higher-ups-at-volkswagen/#fa8c78f3c4ed>

U.S. Case Against Arrested Dieselgate Manager Is Threat To VW Higher-Ups

By Bertel Schmitt 1/10/17 7:03 AM EST

“VW bosses live dangerously,” was the headline in Germany’s BILD tabloid (German – paywall) after the FBI arrested Volkswagen manager Oliver Schmidt over the weekend during a trip to Florida. The U.S. Department of Justice is assembling an array of witnesses against Volkswagen while the company is trying to close a deal to make a criminal case go away before Donald Trump comes in.

In the complaint against Schmidt, it is alleged that Volkswagen orchestrated a massive cover-up of its use of illegal defeat devices to cheat on vehicle emissions tests. Sure, this has been insinuated before, but now, the FBI is saying it. Dangerously for VW bosses, the FBI’s writ officially implicates other Volkswagen managers in the cover-up, which should impact their travel plans.

Schmidt was general manager of Volkswagen’s U.S. Engineering and Environmental Office since 2013 until he was transferred back to Germany in 2015. In that job, he was responsible for managing relations with the EPA and the California Air Resources Board (CARB).

In March 2014, the International Council on Clean Transportation (ICCT) published a study noting what the FBI calls “substantial discrepancies” between the Nitrous Oxide (NOx) emissions of Volkswagen diesel vehicles when tested on the road and official tests in the lab. This study was roundly ignored in the media, but at Volkswagen, it set off a red alert.

“On or about May 20, 2014,” says the FBI, “SCHMIDT emailed the then-Chief Executive Officer of VW GOA and another employee a document analyzing “Possible Consequences/Risks: of the ICCT study. The analysis noted possible monetary penalties per vehicle of up to \$37,500 from the EPA, with 500,000 to 600,000 effected vehicles.”

"VW GOA" refers to Volkswagen Group of America. Its CEO at the time was Michael Horn. The former head of Volkswagen aftersales was given the CEO job on Jan 1, 2014. In congressional testimony on October 8, 2015, Horn said under oath that he may have heard of possible and fixable problems in spring 2014. He also claimed he didn't know of any defeat devices until the dieselgate scandal broke in September 2015. In that hearing, Vermont Democrat Peter Welch asked Horn what he will read while he is in jail. Horn astutely put himself out of reach of the arm of U.S. justice, and left Volkswagen in March 2016, not to be seen again.

According to the FBI's informants at Volkswagen, the company, after learning of the ICCT study, "formed an ad hoc task force to formulate responses to questions that arose from the U. S. regulators. VW employees determined not to disclose to U.S. regulators that the tested vehicle models operated with a defeat device. Instead, VW employs pursued a strategy of concealing the defeat device," the FBI alleges.

At around the same time, on May 23, 2014, Volkswagen manager Bernd Gottweis informed his boss, Volkswagen's then-CEO Martin Winterkorn, of the ICCT study, a report in Germany's usually well-informed BILD tabloid [German – paywall] claims. According to the report, Gottweis told Winterkorn that "it can be assumed that the regulator will investigate the VW-systems for the presence of a cycle-beating function in the engine controller software (so-called defeat device)."

The FBI didn't catch that meeting, but it found evidence of another one, a year later.

"On or about July 27, 2015, SCHMIDT and other VW employees presented to VW's executive management in Wolfsburg, Germany, regarding the existence, purpose and characteristics of the defeat device," the FBI claims, continuing that "in the presentation, VW employees assured VW executive management that U.S. regulators were not aware of the defeat device. Rather than advocate for disclosure of the defeat device to U.S. regulators, VW executive management authorized its continued concealment." The same executive management claimed later not having heard anything of a defeat device until the scandal broke in September 2015

The plan to keep the defeat device concealed was duly followed, until a month later, "Volkswagen stunned U.S. regulators with a confession," as Reuters wrote. According to Reuters, it was at the sidelines of a green car conference on August 21, 2015 when VW employees admitted to EPA and CARB that "the automaker hacked its own cars to deceive U.S. regulators," as Reuters put it. The FBI says the admission came two days earlier, on August 19, 2015, in a meeting at CARB's offices in El Monte, CA. "In direct contravention of instructions from his management," a Volkswagen engineer fessed up at the meeting, the Feds claim.

That engineer is one of two "cooperating witnesses" the FBI found in VW's engine development department. Both have, says the FBI, "agreed to cooperate with the government's investigation in exchange for an agreement that the government will not prosecute [them] in the United States." Also, the government has the cooperation of VW engineer James Liang, who cut a plea deal last September.

Two days before the pivotal CARB meeting, the FBI alleges, Oliver Schmidt said in an email that another Volkswagen manager had recommended that the engineer should not go to the CARB meeting "so he would not have to consciously lie." That engineer, referred to as "CW1" (as in cooperating witness one), went nonetheless, and he apparently was unable to lie.

The identity of the CWs remains cloaked, but there are a few possibilities for CW1.

In a separate lawsuit of the State of New York against Volkswagen, it is alleged that "multiple Volkswagen AG diesel department heads (together with VWGoA EEO heads Stuart Johnson and Oliver Schmidt)" were to attend the August 19 meeting.

The New York suit has yet another version of the revelation. It says that the defeat device was disclosed by Volkswagen in another meeting with CARB on September 3, 2015. In that, Friedrich Eichler, Richard Preuss, Thorsten Duesterdieck, and Burkhard Veldten attended on the Volkswagen side, along with Stuart Johnson and Oliver Schmidt, the complaint says.

Schmidt was arrested by the FBI on Saturday, January 2017, as he got ready to depart Miami International Airport to fly home to Germany, the New York Times said. "Why Mr. Schmidt risked arrest by traveling in the United States remains a mystery," the paper rightly mused. If his lawyers checked whether Schmidt was on the wanted list before he departed to the U.S., they would have found nothing: The criminal complaint was filed on December 30, 2016, when he was already in-country.

Schmidt is not in jail, says Germany's Frankfurter Allgemeine, but he cannot leave the country, and he can be incarcerated should he resist his extradition to Michigan to face a court in Detroit.

The government is expected to lean heavily on Schmidt to extricate more information and to implicate the people really responsible for the scandal. While in Germany, Volkswagen managers are out of reach of the long arm of U.S. justice, Germany does not extradite its citizens. If the U.S. files a Red Notice with Interpol, an honor usually reserved to drug kingpins and war crimes cases, trips outside of Germany can become perilous, even if the destination is not the United States.

Handelsblatt

<https://global.handelsblatt.com/companies-markets/florida-arrest-adds-to-vws-woes-674956>

Florida Arrest Adds to VW's Woes

By Astrid Dorner 1/10/17

It almost seems like a curse: Every time Volkswagen attempts to leave Dieselgate behind and look to the future by presenting new makes and models, the U.S. Justice Department puts a spoke in the carmaker's wheels.

Last year, the Justice Department filed a civil suit against VW shortly before the opening of the Detroit auto show. Now, just as VW's core-brand chief executive Herbert Diess was trying to win over Americans with a new SUV model, the FBI has arrested a Volkswagen executive in Florida on fraud and conspiracy charges relating to the emissions scandal. It involved the firm using so-called cheat software to artificially lower emissions of its diesel cars.

In June, Deputy U.S. Attorney General Sally Yates said the VW probe is looking at "multiple companies and multiple individuals." Shortly before, Volkswagen had agreed to pay \$15 billion (€14 billion) to U.S. authorities and owners of some 500,000 vehicles.

But the criminal investigations are continuing and Ms. Yates, who will be stepping down next week, has made good on her threat. Oliver Schmidt, who appeared in court on Monday and will be testifying in a hearing on Thursday, led VW's U.S. regulatory compliance office from 2014 to March 2015 in Auburn Hills, Michigan, before being called back to Germany.

During his tenure in the U.S. and thereafter, he is supposed to have repeatedly deceived U.S. authorities, according to the criminal complaint published on Monday and obtained by Handelsblatt. Mr. Schmidt is said to have been in handcuffs and wearing a prison uniform, Reuters reported.

He is thought to have been on vacation in Florida when he was then prevented from leaving. Mr. Schmidt is said to have known about the investigations against him, even meeting with FBI agents in London last year, according to Reuters. It remains unclear why he still traveled to the U.S.

Mr. Schmidt has long been regarded as a key figure in investigations, with his name appearing several times in the complaint filed against VW by New York Attorney General Eric Schneiderman in July.

According to Monday's court document, the FBI is cooperating with two crown witnesses that worked in engine development and have in return secured themselves immunity from prosecution in the U.S. VW manager James Liang has already pleaded guilty and is hoping for a lenient verdict as he cooperated with the authorities.

According to the criminal complaint, Mr. Liang was informed by Mr. Schmidt and others about the situation in the emissions scandal by July 27, 2015 and was already expecting charges in a worst-case scenario. The Dieselgate scandal was revealed in September 2015.

Meanwhile, sources close to the negotiations are claiming that the U.S. Justice Department and VW are nearing a multi-billion dollar agreement to resolve the government's civil and criminal investigations. The deal would require the German automaker to pay a penalty of more than \$3 billion, possibly \$4 billion.

VW has been eager to put the Justice Department investigation behind it before President-elect Donald Trump is sworn in on January 20. But the investigations against individual managers will now continue after this point. Mr. Liang's verdict is set for early March. And the lawsuit against Mr. Schmidt, which could soon continue in the state of Michigan, has just begun.

New York Times

<http://www.nytimes.com/2017/01/09/business/volkswagen-emissions-scandal-oliver-schmidt.html?smid=tw-nytimes&smtyp=cur&r=0>

Volkswagen Executive's Trip to U.S. Allowed F.B.I. to Pounce

By Jack Ewing, Adam Goldman, and Hiroko Tabuchi 1/9/17

When F.B.I. agents learned that a prime suspect in the Volkswagen emissions scandal was traveling to the United States, investigators knew they were on the cusp of a rare feat: the arrest of an overseas corporate executive accused of wrongdoing.

On Saturday night, agents swooped in to arrest the Volkswagen executive, Oliver Schmidt, as he prepared to depart Miami International Airport for Germany, according to two law enforcement officials familiar with the case, one of whom described the circumstances of the arrest. The officials spoke on the condition of anonymity because they were not authorized to speak publicly about the case.

Mr. Schmidt, formerly Volkswagen's top emissions compliance executive in the United States, has been charged with defrauding the government and violating the Clean Air Act. He made an initial appearance on Monday in federal court in Miami. He will be moved to Detroit, where he was originally charged and where court documents suggest that he might be valuable in the government's investigation into other Volkswagen officials.

Mr. Schmidt, 48, played a central role in Volkswagen's cover-up of its diesel emissions cheating, according to an affidavit from an F.B.I. agent that was unsealed on Monday. Even as the company obfuscated details of its cheating program from regulators, Mr. Schmidt warned executives in Germany that the company could face criminal charges for its actions, the affidavit says.

The case against Mr. Schmidt sheds new doubt on Volkswagen's assertions that top executives did not understand the full scale of the wrongdoing until early in September 2015, more than a year after questions were first raised about emissions from its vehicles. Mr. Schmidt briefed executives in detail months earlier, in July, according to the criminal complaint, filed in federal court in Michigan. The timeline of the briefing has not been laid out before by prosecutors.

The complaint also says that other employees were involved in a cover-up, suggesting that more charges could be coming. It is unclear which employees — above or below Mr. Schmidt — the government believes were involved. Mr. Schmidt reported to high-ranking officials at Volkswagen headquarters in Wolfsburg.

Volkswagen is nearing a deal with the Justice Department to pay more than \$2 billion to resolve the criminal investigation into the emissions cheating, according to three people briefed on the negotiations. The company or one of its corporate entities is expected to plead guilty as part of the deal, according to one of the people.

That deal, though, would not prevent charges against individual employees. Volkswagen's emissions scandal has cost the company \$16 billion in civil settlements in the United States alone.

The Financial Times

<https://www.ft.com/content/04aa04aa-d648-11e6-944b-e7eb37a6aa8e>

VW top management 'authorised concealment' of emissions cheating

By David J Lynch and Patrick McGee 1/9/17

Volkswagen's senior management was briefed in the summer of 2015 on the cheating software at the centre of the company's diesel emissions scandal, and ordered its continued concealment, according to criminal charges unsealed by US prosecutors on Monday.

VW employees briefed "executive management" in July 2015 at the German carmaker's headquarters in Wolfsburg, Germany, about the use of software-based defeat devices (<http://next.ft.com/content/ac6742b2-611d-11e5-a28b-50226830d644>) to understate emissions in official tests, says a criminal complaint about the company's former head of compliance in the US.

"Rather than advocate for disclosure of the defeat device to US regulators, VW executive management authorised its continued concealment," adds the complaint. The VW employees allegedly involved in the briefing included Oliver Schmidt, a company veteran who was head of compliance in the US in 2012 and 2015. At an initial court appearance on Monday in Miami, a judge ordered that Mr Schmidt be detained pending a further hearing scheduled for Thursday.

The conduct outlined in the criminal complaint raises the likelihood that some more senior VW executives in Germany and the US could face charges, said one Department of Justice official.

It comes at a time when VW is seeking to finalise a criminal settlement (<http://next.ft.com/content/283d6fba-b98d-11e6-8b45-b8b81dd5d080>) with the US authorities over the emissions scandal.

Such a deal would be a milestone in VW's efforts to draw a line under the affair, which has become the worst crisis in the company's history. Mr Schmidt is accused of conspiring for nearly a decade to conceal from US regulators the existence of defeat devices in VW diesel cars, according to the criminal complaint filed in federal court in Detroit.

He is also accused of defrauding the US by impairing the Environmental Protection Agency's emissions control programme, cheating VW customers, and violating the Clean Air Act.

For several weeks before VW admitted to US regulators in September 2015 that its diesel cars had cheated emissions tests, employees worried about the danger of criminal penalties for their actions, says the criminal complaint.

VW's "executive management" in Wolfsburg requested a briefing on the US situation, which took place on July 27 2015, says the criminal complaint.

For that briefing, Mr Schmidt and several colleagues prepared a slide on the potential outcomes of a meeting with California regulators scheduled for the following week.

A "positive" meeting would result in the needed certification to sell VW cars in the US. But a "negative" outcome raised the question "Indictment?", according to the criminal complaint.

Mr Schmidt's arrest by the Federal Bureau of Investigation marks the latest development in a scandal dating back more than a decade. In 2006, VW engineers realised that a new diesel engine they had designed would not be powerful enough to satisfy car owners and not green enough to pass muster with regulators.

The new engine was the centrepiece of an ambitious strategy to boost VW sales in the US market. Rather than admit defeat, the company wrote software called a defeat device to cheat emissions tests.

The device was programmed to recognise when a diesel car was undergoing the government's standard laboratory tests and operate in accordance with EPA limits.

But when driven on the road, the software allowed the cars to spew up to 40 times the allowable levels of nitrogen oxide.

"VW employees knew that if they had told the truth and disclosed the existence of the defeat device, VW could not have sold any of its diesel vehicles in the United States," says the criminal complaint.

VW's scheme began unravelling in early 2014 when a study ordered by the International Council on Clean Transportation, a non-profit organisation, detected the higher readings on the road emissions by VW diesel cars.

In April 2014, after learning of the study's findings, Mr Schmidt emailed a colleague about the issue: "It should first be decided whether we are honest. If we are not honest, everything stays as it is."

VW formed an ad hoc engineering task force to handle regulators' questions.

"VW employees determined not to disclose to US regulators that the tested vehicle models operated with a defeat device," says the criminal complaint.

"Instead, VW employees pursued a strategy of concealing the defeat device in responding to questions from US regulators, while appearing to co-operate."

By the summer of 2015, Mr Schmidt was directly involved in efforts to deal with regulators' increasingly pointed questions.

James Robert Liang, a VW engineer, in September became the first person to plead guilty (<http://next.ft.com/content/04322dcc-76a3-11e6-b60a-de4532d5ea35>) to criminal charges, including conspiring to defraud US customers and regulators. He agreed to co-operate with US government investigators in return for leniency.

Prosecutors also are getting help from two other VW insiders, who worked in the company's engine development department, says the criminal complaint.

They are co-operating in return for assurances that they will not be prosecuted in the US.

From 2012 to 2015, Mr Schmidt was general manager of VW's environmental engineering office in Michigan, which was responsible for dealing with US regulatory agencies such as the EPA and the California Air Resources Board.

In March 2015, he was promoted to the post of principal deputy to the head of engine development in Wolfsburg.